



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 22, 2022

IN THE MATTER OF:

Appeal Board No. 625540

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination denying the claimant's request to backdate her claim for Pandemic Unemployment Assistance (PUA) benefits to March 9, 2020, on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed August 31, 2022 (A.L.J. Case No.), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted by the claimant.

Our review of the record reveals that the case should be remanded to hold a further hearing. In light of the claimant's testimony, and her contention on appeal regarding what her telephone records reflect, the claimant shall be given an additional opportunity to produce those records.

Specifically, the claimant is directed to produce telephone records for the period beginning January 1, 2020 through April 30, 2020 to establish the dates, times, and length of telephone calls she made to the Department of Labor during that period. The records produced shall be received into evidence after the appropriate confrontation and opportunity for objection.

In addition, the claimant is directed to have her witness, Andrew Perna,

available to testify at the remand hearing. Mr. Perna shall be questioned to determine whether he was a firsthand witness to any telephone conversations the claimant had with Department of Labor representatives during March and April 2020, when the conversation(s) occurred, whether he heard both sides of the conversation(s) between the claimant and the Department representative, and if so, what he heard.

The claimant is placed on notice that her failure to produce the records or witness as directed, may result in the hearing Judge or the Board taking an adverse inference against her, and deciding that the evidence not produced would not support her position.

The hearing Judge may receive any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the initial determination denying the claimant's request to backdate her claim for Pandemic Unemployment Assistance (PUA) benefits to March 9, 2020, on the basis that the claimant did not comply with registration requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER